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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	
Southwestern Bell Communications Services, Inc.	)	CC Docket No. 97-121
d/b/a Southwestern Bell Long Distance	)	
for Provision of In-Region,	)	
InterLATA Services in Oklahoma	)	

To: The Commission

COMMENTS OF BELLSOUTH CORPORATION IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN OKLAHOMA

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EXECUTIVE SUMMARY

The local competition provisions of the Telecommunications Act of 1996 are working. BellSouth and other incumbent local exchange carriers ("LECs") are negotiating and implementing interconnection and resale agreements with competitors. New providers — ranging from AT&T to small, start-up companies — are entering the local market. State regulators are aggressively fulfilling their oversight responsibilities.

Competition in the long distance business, however, is little changed from a year ago. Due to continuing restrictions on the Bell companies, three out of four U.S. telephone subscribers still do not have the option of using their local carrier for interLATA calls. They are effectively hostage to the ongoing price increases of AT&T, MCI, and Sprint, co-oligopolists who jointly hike their rates without regard to falling costs.

Section 271 proceedings will test the Commission's resolve to implement faithfully the 1996 Act and to augment interLATA competition. Congress wanted fuller competition in all telecommunications markets. It specifically found that consumers would benefit from enhanced competition in long distance services once steps have been taken to open local markets. Indeed, the evidence is overwhelming that immediate interLATA entry by the Bell companies will benefit the public. Where Bell companies or other large LECs have been allowed to provide in-region long distance service — such as in Connecticut and the New Jersey "corridors" — consumers have seen more intense competition and lower prices. Bell companies likewise have contributed to healthy, growing markets in wireless, information services, customer premises equipment, and other competitive businesses adjacent to local services, thereby disproving the claims of competitors who opposed their entry for self-serving reasons.

Although this proceeding raises many factual issues unique to Southwestern Bell in Oklahoma, it also presents legal issues that, if resolved properly, will ensure parallel entry opportunities in local and long distance markets, and make full competition in all telecommunication businesses possible throughout the nation. The text and legislative history of the 1996 Act and the uniform record of pro-competitive Bell company entry all point in the same direction. Congress intended that Section 271 proceedings would produce greater competition, not prolonged regulation. Thus, the Commission must reject the calls of those who will ask it to keep out new competitors as a way of advancing their own self-interest or policy preferences. It likewise should dismiss all suggestions that Bell companies must sit on the sidelines of the interexchange market while AT&T and other incumbents prepare themselves to enter the local telephone business.

Like the antitrust laws, the 1996 Act was drafted to protect competition and consumers, not competitors.[*] The Commission must implement that intent by approving, after case-by-case analysis, any Section 271 application that demonstrates compliance with Congress' express statutory prerequisites.

[*] See generally Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962).

TABLE OF CONTENTS

COMMENTS OF BELLSOUTH CORPORATION IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN OKLAHOMA

BellSouth Corporation supports Southwestern Bell's application for permission to provide interLATA services in Oklahoma. While the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act" or "Act"), requires that the Commission consider each application individually, Southwestern Bell's application reflects a fundamental fact that will be common to all Bell company applications under Section 271: Once the local exchange market in a Bell company's territory is open to competition as specified by the 1996 Act, and the Bell company has complied with applicable safeguards, its provision of in-region, interLATA services always will benefit competition and consumers. If Southwestern Bell's factual allegations are true, then it has indeed satisfied the legal requirements of Section 271, and the Commission should allow Southwestern Bell to augment deficient long distance competition in Oklahoma.

I. SOUTHWESTERN BELL'S APPLICATION IS PROPER UNDER BOTH OF THE POSSIBLE AVENUES FOR SATISFYING SECTION 271(c)(1)

The first set of issues before the Commission concerns whether the local market in Oklahoma is open to competition in accordance with the requirements of Section 271(c). This is a State-specific, Bell company-specific question. Perhaps for this reason, the Commission has decided that the requirements of Section 271 should be interpreted in the context of individual applications, rather than in a general rulemaking proceeding.

Bell companies may satisfy the express statutory prerequisites of Section 271(c) in many different ways, depending upon market circumstances in the State for which they are applying and their own business choices.[1] An application filed by a company that has received no interconnection request from a qualifying facilities-based carrier will present different legal and factual issues from an application submitted by a company that has implemented interconnection agreements with such a competing provider. The details of various agreements and statements of generally available terms and conditions also may differ greatly, even if all are consistent with the Act. Even within a Bell company's region, circumstances may vary widely from State to State. In BellSouth's local service territory, for example, AT&T has announced that it is targeting Georgia to build a local network and compete most aggressively for local business.[2]

By taking the path of adjudication rather than rulemaking, the Commission has committed itself to resolving the issues raised by individual applications as they arise.[3] In this proceeding, therefore, the Commission should focus upon the questions squarely posed by

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[1] See NLRB v. Bell Aerospace Co., 416 U.S. 267, 294 (1974) (noting that "adjudication is especially appropriate" where there are a large number of potential cases with varying facts), overruled in part on other grounds, 454 U.S. 170 (1981).

[2] See State Activities, Communications Daily, Apr. 1, 1997.

[3] See Association of Nat'l Advertisers, Inc. v. FTC, 627 F.2d 1151, 1166 (D.C. Cir. 1979) ("rulemaking allows an agency to gather information and views that might be irrelevant to the narrowly focused concerns of adjudication"), cert. denied, 447 U.S. 921 (1980); Philadelphia Gas Works v. FERC, 989 F.2d 1246, 1251 (D.C. Cir. 1993) ("when an agency adjudicates, it typically adopts less generic or sweeping positions than it would when adopting a rule"); also cf. Omnipoint Communications, Inc., 11 FCC Rcd 10785, 10789, ¶ 9 (1996) (ripeness principles "provide a useful analogy in determining whether the Commission should exercise its discretion to issue declaratory rulings").

Southwestern Bell's application and reserve judgment on the many issues that might be presented in future Section 271 applications.[4]

Nevertheless, Southwestern Bell's application squarely raises several legal issues that will affect the eligibility of other Bell companies for interLATA relief. Proper resolution of these issues would promote Congress' goal of rapid Bell company interLATA entry under Section 271(c)(1), subject, of course, to the facts of each case.

A. Southwestern Bell Satisfies Section 271(c)(1)(A)

BellSouth has already addressed how Bell companies may satisfy the requirements of Section 271(c)(1).[5] Accordingly, BellSouth will revisit these issues only briefly.

A Bell company may show that it affords competitors the interconnection and network access required under the 1996 Act by entering into state-approved interconnection agreements with one or more qualifying, facilities-based competitors. § 271(c)(1)(A). As soon as even one such competitive local exchange carrier ("CLEC") has entered the market pursuant to an interconnection agreement, regulators need no longer wonder whether the agreement's terms will allow such entry: The terms of the agreement are available to all other CLECs on a

[4] Indeed, given the short time available to consider Section 271 applications, the Commission will have to work hard just to resolve the questions posed in each adjudication. As Chairman Hundt has explained, the volume of applications that likely will be received and the 90-day statutory deadline will "press [the Commission's] resources very hard." Statement of Chairman Hundt Regarding Ameritech's Filing to Provide In-Region Long Distance Services in Michigan (rel. Jan. 2, 1997). Attempting to resolve issues on which a full record may not have been developed would be as unwise as it would be unnecessary.

[5] See Comments of BellSouth Corporation on ALTS' Motion to Dismiss Southwestern Bell's Application to Provide In-Region, InterLATA Services in Oklahoma (filed Apr. 28, 1997) ("BellSouth Comments on ALTS Motion").

nondiscriminatory basis under section 252(i), and if one facilities-based carrier finds entry feasible under the terms of its agreement, others should be able to enter the market through the same strategy.

To satisfy subsection (A)'s requirement of interconnection with a CLEC that provides service to "residential and business" customers "exclusively" or "predominantly" over its own facilities, Southwestern Bell relies upon an interconnection agreement with one competitor, Brooks Fiber. Southwestern Bell represents that Brooks Fiber began to furnish local exchange service to residential and business customers in January 1997, and offers such service over its own network through effective state tariffs. See Southwestern Bell Br. 10-11. If borne out, these representations would satisfy the "residential and business" subscribers requirement of Section 271(c)(1)(A). The general business and residential offerings described in Brooks Fiber's tariffs are "in fact, local telephone exchange service" of the sort subsection 271(c)(1)(A) was drafted to include.[6] The Act establishes no minimum number of residential or business customers that must actually be served. As Southwestern Bell demonstrates, legislators rejected proposals that would have imposed such a condition. Southwestern Bell Br. 9-10.

Likewise, Southwestern Bell's representations that Brooks Fiber serves or offers to serve customers exclusively over its own network are enough to satisfy the "predominantly" or "exclusively" facilities-based requirement. Southwestern Bell Br. 10. Assuming the accuracy of

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[6] H. Rep. No. 104-204, Pt. I, at 77 (1995); see Brooks Fiber Communications of Tulsa, Inc., OCC Tariff No. 2, § 4 (Aug. 8, 1996) (App. Vol. II, Tab 3 to Southwestern Bell's Application); Brooks Fiber Communications of Oklahoma, Inc., OCC Tariff No. 2, § 4 (Aug. 8, 1996) (App. Vol. II, Tab 3 to Southwestern Bell's Application).

Southwestern Bell's factual representations, there is no need in this proceeding to consider further questions such as whether unbundled elements obtained from a Bell company count as a competitor's "own" facilities. See Southwestern Bell Br. 11-12. Nor should the Commission try to anticipate the different measurements another Bell company might use to show that the facilities used by a carrier are "predominantly" its own.

B. Southwestern Bell Satisfies Section 271(c)(1)(B)

Section 271(c)(1)(B) permits a Bell company to secure interLATA entry on the basis of an effective statement of terms and conditions, so long as it has not received an interconnection request more than three months earlier from a CLEC that meets the "residential and business" and "facilities-based" requirements of Section 271(c)(1)(A). Under Section 271(c)(1)(B), a Bell company need only offer CLECs interconnection, resold services, and unbundled network access. It does not matter whether any competitor has actually taken the Bell company up on its offer of interconnection.

If the Commission finds that Brooks Fiber is not a "qualifying" carrier today, then Southwestern Bell is eligible for interLATA entry under Section 271(c)(1)(B) based upon its effective statement of terms and conditions. As BellSouth has fully explained, the text, history, and purpose of the "A and B Tracks" of Section 271(c)(1) confirm that only a timely request from a CLEC that actually qualifies under Track A can foreclose Bell company entry under Track B. BellSouth Comments on ALTS Motion at 3-6. While Section 271(c)(1)(A) allows Track A entry based on interconnection with a qualifying provider — i.e., a CLEC that meets the "facilities-based" and "residential and business" requirements — Section 271(c)(1)(B) offers B

Track entry "if . . . no such provider has requested th[at] access and interconnection" three months prior to the date that the Bell company files its application. Congress did not want the Commission to have to guess whether a requesting CLEC would someday meet the "residential and business" and "facilities-based" requirements, or to rely on empty promises from requesters. Rather, it instructed the Commission to credit requests only from a CLEC that actually has committed itself to a local network and local telephone services. This is especially important because companies such as AT&T, MCI, and Sprint want to protect their own shares of the interLATA market against new competitors. Even though these companies are positioned to become facilities-based CLECs, they may hold off doing so in order to protect interLATA earnings.[7] If this strategy barred Bell company interLATA entry, the result would be less competition at the local level and in long distance, to the detriment of consumers.

Congress also decided that a request from a qualifying CLEC should not foreclose the B Track immediately. Rather, when a qualifying CLEC requests interconnection or a requesting CLEC launches facilities-based local service for residential and business customers, this merely triggers the three month time frame in Section 271(c)(1)(B). The Bell company becomes ineligible for interLATA entry under the B Track only if it fails to submit its application within that statutory time frame. BellSouth Comments on ALTS Motion at 6-7. If Southwestern Bell's factual assertion that Brooks Fiber did not begin serving both residential and business customers

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[7] Indeed, AT&T reportedly made a calculated decision to put off its plans to enter the local market on a facilities basis in many states, electing instead to "strike resale deals" with incumbent LECS. "AT&T's President Is Wasting No Time in Shaking Things Up," Wall Street Journal, December 24, 1996, at A1.

before January 15, 1997 (Southwestern Bell Br. 15, n. 15) is true, then Southwestern Bell is eligible for interLATA entry under the B Track of Section 271(c)(1) because it filed with this Commission prior to April 15.

II. A BELL COMPANY MAY DEMONSTRATE CHECKLIST COMPLIANCE WITH BOTH A STATEMENT AND AGREEMENTS

In addition to satisfying Section 271(c)(1), Southwestern Bell must satisfy the "competitive checklist" of Section 271(c)(2)(B). This too is a narrow question — unique to a Bell company and a particular in-region State.[8] But, like the inquiry under Section 271(c)(1), it raises several legal issues that have significance beyond this proceeding.

As a preliminary matter, it is important to note that although Section 271(c)(1) and Section 271(c)(2) together ensure that local markets are open, they advance this goal in two distinct ways. The eligibility provisions of Section 271(c)(1) ensure that facilities-based competition exists or, if it does not exist, is absent through no fault of the Bell company. The competitive checklist of Section 271(c)(2) specifically describes the interconnection and access that Bell companies must make available to all CLECs. The competitive checklist contributes to the opening of local markets by guaranteeing interconnection and access at rates, terms, and

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[8] The same principles that apply to determining whether Southwestern Bell's local markets are open to competition govern the Commission's consideration of Southwestern Bell's compliance with Section 272. See § 271(d)(3)(B). Every Bell company will have to decide for itself how to comply.

conditions that make competition feasible — regardless of which services a particular CLEC ultimately may decide to offer.[9]

There are several ways a Bell company may provide CLECs with the required access to checklist items. First, the terms of a state-approved interconnection agreement may expressly afford a CLEC access to a particular checklist item. Second, a Bell company may provide a CLEC with access to a checklist item through the "most favored nation" ("MFN") clause of an interconnection agreement that incorporates the provisions of other state-approved agreements or a statement of terms and conditions. Third, even where a CLEC does not have an interconnection agreement (or its agreement does not contain an MFN clause), the CLEC nonetheless automatically is "provided . . . access" to the provisions of state-approved agreements under Section 252(i), which requires Bell companies to "make available any interconnection, service, or network element provided under any agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." Finally, the generally available terms and conditions included in a Bell company's effective statement may be invoked by any CLEC in the State.

Because Section 271(c)(2) focuses upon the terms available to all CLECs, rather than the services provided by any particular CLEC, a Bell company may rely upon both agreements and a

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[9] See 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings) ("checklist" enacted as substitute for "actual and demonstrable competition test"); 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (same).

statement to demonstrate checklist compliance, regardless of how it chooses to satisfy Section 271(c)(1). Unlike the eligibility provisions of Section 271(c)(1) — which preclude reliance on a statement three months after a qualifying CLEC requests interconnection — the checklist provisions of Section 271(c)(2) allow a Bell company to rely upon a statement of generally available terms and conditions at any time. Section 271(c)(2) states that a Bell company must "provid[e] access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or . . . generally offe[r] access and interconnection pursuant to a statement described in paragraph (1)(B)," and that "such access and interconnection [must] meet[] the requirements of" the competitive checklist. A Bell company with an effective statement always offers interconnection and access pursuant to a "statement described in subsection (c)(1)(B)," regardless of whether it also provides access and interconnection to some CLECs pursuant to agreements, and regardless of whether some of those CLECs are qualifying facilities-based carriers that make the B Track of Section 271(c)(1) unavailable.

The Act's legislative history confirms that the limitations on B Track entry under Section 271(c)(1) have no place in the checklist of Section 271(c)(2), and that a Bell company always may demonstrate checklist compliance using both agreements and a statement. In the final days before enactment, Representative Paxon explained that "the legislation would not require the Bell operating company to actually provide every item to a new competitor under the agreement contemplated in Section 271(c)(1)(A) in order to obtain in-region relief." Instead, where a "competitor [does] not want every item on the list" "the Bell operating company would satisfy its obligations by demonstrating, by means of a statement similar to that required by Section

271(c)(1)(B), how and under what terms it would make those items available to that competitor and others when and if they are requested." 142 Cong. Rec. E261-62 (daily ed. Feb. 1, 1996) (statement of Rep. Paxon).[10]

Not only the text and history of the Act, but also its underlying purposes, ensure that a Bell company will always be able to rely upon an effective statement to demonstrate checklist compliance. If a request for interconnection from a qualifying CLEC prevented a Bell company from relying on its statement not only under the B Track of Section 271(c)(1), but also under the competitive checklist of Section 271(c)(2), rapid Bell company interLATA entry — a "principal goal[]" of the 1996 Act[11] — would become virtually impossible. The Bell company would have to wait not simply until it had implemented a state-approved agreement with that facilities-based provider of business and residential service — a limited delay that Congress may have intended[12] — but until just the right combination of qualifying CLECs had requested every permutation of interconnection and access necessary to fulfill all 14 checklist items. As Southwestern Bell

[10] Because Southwestern Bell has an effective statement on file with the State Commission in Oklahoma, this Commission need not decide whether, as Representative Paxon suggested, the checklist could be satisfied in some circumstances through a less formal general offering to CLECs.

[11] Local Interconnection Order at ¶ 3; see also 142 Cong. Rec. S686, S687 (Feb. 1, 1996) (statement of Sen. Pressler) (1996 Act "will lower prices on long-distance calls through competition").

[12] Congress kept any such delays to a reasonable duration by allowing a Bell company to proceed under Section 271(c)(1)(B) even after receiving a request for interconnection from a qualifying CLEC, if that CLEC "fail[s] to negotiate in good faith" or "fail[s] to comply, within a reasonable period of time, with the implementation schedule." Moreover, Congress provided that there would be no delay at all if the Bell company submits its application within three months of receiving the triggering request. § 271(c)(1)(B).

explains, each qualifying facilities-based CLEC by definition will provide some service over its own facilities, and will not itself need to request all checklist items. See Southwestern Bell Br. 16-17.

For similar reasons, the Commission must reject attempts by the long distance carriers to require that each provision of an interconnection agreement actually be implemented for it to count under the checklist.[13] As Southwestern Bell points out, even if a Bell company lacked an effective statement and were to rely exclusively upon agreements to satisfy the competitive checklist, the Act would require only that its agreements "provide" "access and interconnection" in accordance with the competitive checklist. See Southwestern Bell Br. 16. The Bell company would not have to wait for CLECs to purchase every available item before applying for interLATA entry. To the contrary:

> Where the Bell operating company has offered to include all of the checklist items in an interconnection agreement and has stated its willingness to offer them to others, the Bell operating company has done all that can be asked of it and, assuming it has satisfied the other requirements for in-region interLATA relief, the Commission should approve the Bell operating company's application for that relief.

142 Cong. Rec. E261-62 (statement of Rep. Paxon). Any other rule would enable the long distance carriers to protect their long distance oligopoly by refusing to include items in interconnection agreements or, more simply, by refusing to purchase the items included in those

[13] See App. Vol IV, Tab 21 to Southwestern Bell's Application (Statement of Edwin P. Rutan, II on Behalf of AT&T Communications of the Southwest ¶ 35 (filed Mar. 11, 1997); Statement of Steven E. Turner on Behalf of AT&T Communications of the Southwest ¶ 35 (filed Mar. 11, 1997) (attached to Southwestern Bell Application at App. Vol IV, Tab 21); App. Vol IV, Tab 20 to Southwestern Bell's Application (Sprint comments at 7-8, 19).

agreements. See Southwestern Bell Br. 13, 17. The Act cannot be twisted to reward this anticompetitive strategy.

To require that a CLEC negotiate for, or actually purchase, each checklist item would not only delay Bell company entry — in direct contravention of Congress' intent — but would also turn the Act upon its head. Weak facilities-based local competitors who need to take large amounts of checklist facilities and services from incumbent Bell companies would open the door to the long distance business, but strong facilities-based competitors who operate entirely independently of Bell companies would not. Delaying long distance competition would do nothing to bolster facilities-based local competition.[14]

Thus, Congress ensured that open local markets can be shown through the terms of agreements and/or through a state-approved statement of terms and conditions. Either way, there is assurance that competitors will be able to obtain access and interconnection on terms that — in Congress' judgment — enable them to compete.

[14] See 142 Cong. Rec. E261 (statement of Rep. Paxon) ("Congress did not intend to permit the Bell operating companies' competitors to delay their entry into the in-region interLATA market by refusing to include checklist items in the interconnection agreements.").

III. ABSENT EXTRAORDINARY CIRCUMSTANCES, BELL COMPANY INTERLATA ENTRY ALWAYS WILL SATISFY THE COMMISSION'S PUBLIC INTEREST INQUIRY

The final aspect of the Commission's inquiry is whether Southwestern Bell's provision of interLATA services in Oklahoma "is consistent with the public interest, convenience, and necessity." § 271(d)(3)(C). Whatever the contours of this test, Southwestern Bell's Application demonstrates that it is clearly satisfied. Southwestern Bell Br. 52-95. Just as Bell companies have done in the limited instances in which they have been allowed to compete — without any negative side effects — Southwestern Bell will infuse sorely needed competition into a market dominated by the oligopoly of AT&T, MCI and Sprint. Indeed, the Commission's public interest inquiry need not be State-specific: wherever the requirements of Section 271(c)(1) and safeguards of Section 272 are met, Bell company interLATA entry always will benefit the consumers through pressure for higher quality service.

Moreover, in each State where the Commission grants Bell company interLATA relief, it will boost local, as well as long distance competition. As soon as a Bell company is allowed to provide interLATA services in a State and thus can compete on equal terms, the major interexchange carriers will be permitted to bundle any wholesale services they obtain from that Bell company with their own interLATA services. See § 271(e)(1). By granting this, and future, Section 271 applications, the Commission will make the major long distance carriers even more formidable contenders to be customers' lone supplier of integrated telecommunications services, rendering the provision of exchange services that much more competitive. Approval of Section 271 applications also will encourage these competitors actually to fulfill their stated intentions to enter the local telephone business, for they will face imminent competition from Bell companies in providing bundled packages.

Although Bell company entry would satisfy any sort of public interest inquiry (absent exceptional circumstances relating to the particular applicant), Southwestern Bell correctly points out that the Commission's public interest inquiry in this proceeding is constrained.[15] Specifically, Congress instructed the Commission: (i) to follow public interest precedent that treats Bell company entry as presumptively beneficial; and (ii) to reject any public interest test that makes Bell company interLATA entry contingent on actual local competition. See Southwestern Bell Br. 52-56.

There are additional, important limitations on the Commission's authority. Although the interexchange carriers and even the Assistant Attorney General for Antitrust have suggested that the public interest inquiry might be used to delay interLATA entry until CLECs actually purchase checklist items,[16] such a manipulation of the public interest inquiry to override the specific terms of the checklist is expressly prohibited by Section 271(d)(4) of the Act.

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[15] See NAACP v. FPC, 425 U.S. 662, 669 (1976) ("the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation"); 141 Cong. Rec. S7942, S7967 (daily ed. June 8, 1995) (statement of Sen. Burns) ("The FCC's public-interest review is constrained by the statute providing the agency's authority").

[16] See supra note 13; Joel I. Klein, Preparing for Competition in a Deregulated Telecommunications Marketplace, Speech before the Glasser Legalworks Seminar 8-9 (Mar. 11, 1997) (suggesting that a "gas in the pipeline" requirement "dovetails nicely with the 'public interest' standard") (App. Vol. II, Tab 5 to Southwestern Bell's Application) ("Klein Speech").

Section 271(d)(4) provides that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)" (emphasis added). Thus, the Commission may not use the public interest inquiry to alter the checklist that Congress drafted.[17] The Act assures Bell companies that if they satisfy the terms of the competitive checklist, they need not worry that the Commission will extend those terms to impose additional requirements. Any requirement that CLECs actually purchase a checklist item would do just that. Just as the Commission must reject "metric" tests of actual competition, so too must it resist efforts to incorporate an "actual purchase" requirement into the public interest inquiry.

The Commission also must consider Section 271 applications in light of its own decisions applying the accounting and non-accounting safeguards of Section 272 and other provisions of the 1996 Act. These decisions support the conclusion that Bell company entry into in-region long distance presents no genuine danger of competitive harm.

To give the most recent example, the Commission held on April 18 that the Bell companies should be regulated as non-dominant when they provide in-region, interLATA services.[18] It found that Bell companies could not drive other interexchange carriers from the market through cost misallocation, that federal and state price caps reduce incentives to

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[17] See 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings) ("checklist" was Congress' way of ensuring competition); 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (same).

[18] Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, FCC 97-142 (rel. Apr. 18, 1997).

misallocate costs, and that existing safeguards "will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur." Id. ¶¶ 104-06. The Commission likewise dismissed fears of predation against the established long distance incumbents, id. ¶ 108; found that the numerous protections against discrimination will prevent Bell companies from gaining market power upon entry through such tactics, id. ¶¶ 111-19; and concluded that any risk of price squeezes can adequately be addressed through FCC procedures and the antitrust laws, id. ¶¶ 128-29. Finally, the Commission recognized "that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies." Id. ¶ 134.

Such findings, although cautious, support the central premise of Section 271: that Bell company interLATA entry under the strict procedures and safeguards of the 1996 Act will be good for competition and consumers, and should be encouraged. Now is the Commission's time to strip away impediments and self-interested objections and join in that effort.

CONCLUSION

This is not a rulemaking on Section 271. Knowing that additional applications will be filed shortly, the Commission should address only those issues that are squarely presented. Nevertheless, Southwestern Bell's application presents several important legal issues that, if resolved correctly, would promote Congress' goal of opening both local and long distance markets. If the Commission fulfills its statutory role, prompt interLATA entry by numerous Bell companies will be the inevitable result. That is the outcome that Congress expected, and the one that will serve the public interest.

Respectfully submitted,

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May 1, 1997

CERTIFICATE OF SERVICE

I, Brett Kilbourne, hereby certify that copies of the foregoing Comments of BellSouth Corporation in Support of Application by Southwestern Bell for Provision of In-Region, Interlata Services in Oklahoma were served via first class U.S. mail, postage prepaid, this 1st day of May, 1997, to the following:

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